IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/01/2005

CORAM

THE HON'BLE MR.MARKANDEY KATJU, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.MURUGESAN

W.A.No.4215 of 2004
and
W.A.M.P.No.7991 of 2004

R.Rajangam ..Appellant

-Vs-

1. The Registrar of Co-operative Societies (Housing),
79, 4th Cross Street,
Gandhi Nagar, Adyar,
Chennai 20.

2. K.Kandasamy ..Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order passed in W.P.No.21598 of 2004, dated 24.09.2004, as stated therein.

!For Appellant :: Mrs.Hema Sampath

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:J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble The Chief Justice)

This writ appeal has been filed against the impugned order of the learned single Judge dated 24.09.2004.
2. We have heard Mrs.Hema Sampath, learned counsel for the appellant and have perused the record, and find no infirmities in the impugned order of the learned single Judge.

3. The petitioner challenged his transfer order dated 03.06.2004 before the learned single Judge on the ground that his transfer was arbitrary and mala fide. A counter affidavit was filed by the 2nd respondent denying the allegations of mala fides and arbitrariness.

4. It is alleged that the petitioner was on deputation from his

parent department. He was working as Senior Inspector of Co-operative Societies (Housing) Madras under the control of the 2nd respondent. He has completed 4 years of service on deputation, and hence he was relieved from the office of the Deputy Registrar (Housing) by order dated 2 0.02.2004 and one Thiru R.Lakshmikanthan was posted in his place, who took over charge on 20.02.2004, and the petitioner was directed to approach the Regional Joint Registrar of Co-operative Societies, Madras for further posting. Subsequently, on the direction of the Registrar of Co-operative Societies (Housing) the petitioner was posted in the office of the Deputy Registrar (Housing) to look after the administrative work. On 20.02.2003 itself the petitioner had completed his 3 years of service on deputation. During his tenure of 3 years permission was given by the Registrar of Co-operative Societies to implement one Housing Scheme named The Chennai City (Housing Scheme) in the above society. Since, the housing scheme was an on-going one, the Society requested the services of the appellant for one more year beyond 3 years i.e., after 20.02.2003. This proposal was also recommended to the Registrar of Co-operative Societies by the Deputy Registrar ( Housing) vide his letter dated 18.02.2003. Thereafter, after the completion of 4 years in the deputation post, the appellant was relieved from the Office of the Deputy Registar (Housing) by order dated 20.02.20 04. The said relieving order dated 20.02.2004 was passed as per the guidelines given in G.O.Ms.No.256, Personnel and Administration Redress (FR.II) Department dated 25.04.1998. Paragraphs 2(IV) (V), (VI) and (VII) of the above guidelines read as follows:-
Para 2(IV): The period of deputation of a Government servant should not exceed three years. This should be strictly followed.
Para 2(V): The extension of deputation for the fourth year should be only in exceptional and special circumstances in public interest. Extension of deputation for 4th year shall be sanctioned only by the Government in respect of all Government servants belonging to A, B, C and D group and heads of Departments should send proposals for such extension to the Government sufficiently in advance before expiry of third year.
Para 2(VI): No Government servant shall be allowed to be on deputation beyond 4th year on any ground.
Para 2(VII) If no orders sanctioning continuance of deputation beyond 3 years are received before the expiry of deputation period, the foreign employer shall revert the Government servant concerned to his parent department, without waiting for any further orders like posting of substitutes etc., The authority which sanctioned the deputation of Government servant should also take immediate steps to get him reverted.

5. Thus, as per the above said guidelines the deputation cannot continue for more than 4 years. The petitioner had completed 4 years of his service on deputation and hence he was reverted back to his parent department by order dated 20.02.2004. However, in order to cope up with the work load in the office of the Deputy Registrar (Housing), the petitioner was allowed to work in Circle (IV) with the additional charge of Liquidation seat in the office.

6. The Society by its resolution dated 27.02.2004 had withdrawn its earlier resolution to extend the service of the appellant on deputation. The Registrar of Co-operative Societies (Housing) by letter dated 10.02.2004

informed that the extension proposal of the appellant had been rejected by the General Registrar of Co-operative Societies, and in consequence of the same the appellant was reverted back to his parent department. The appellant suppressed these facts and sought to create the impression that he was allowed to continue to work as Special Officer of the Madras City Co-operative Building Society by order dated 27.02.2004. The petitioner was finally reverted back to his parent department from the Office of the Deputy Registrar (Housing) by order dated 03.06.2004. The order dated 03.06.2004 was sought to be served on the appellant repeatedly, but he avoided service until 23.07.2004 when he came to the office and received it. It is alleged that the appellant had suppressed the material facts and had completed 4 years of service on deputation and there was no provision to allow him to continue for more than 4 years on deputation. It is denied that the 2nd respondent demanded any money from the petitioner. The appellant had already been relieved on 02.06.2004.

7. In Abani Kanta Ray Vs. State of Orissa (1995 Supp (4) SCC 169) the Apex Court laid down as follows:-
It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

In State of Punjab Vs. Joginder Singh Dhatt (AIR 1993 SC 2486), the Supreme Court laid down as follows:-
This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of a public servant from one place to another. It is entirely for the employer to decide when, where and what point of time a public servant is to be transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused.

In Union of India Vs. S.L.Abbas (AIR 1993 SC 2444) the Supreme Court observed as follows:-
Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however, does not confer upon the Government employee a legally enforceable right.

In Mrs.Shilpi Bose Vs. State of Bihar, (AIR 1991 SC 532) the Apex Court laid down as follows:-

In our opinion, the Courts should not interfere with transfer orders

which are made in public interest and for administrative reason unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at a place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead the affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day to day transfer orders passed by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.

8. The above observations make it clear that even if there is violation of a Governmental Order or administrative instruction a transfer order cannot be interfered with by the Courts.

9. Thus, it is well settled that transfer is an exigency of service, and hence, the impugned order cannot be challenged. Moreover, in this case we notice that the appellant has completed four years on deputation, and hence, under the relevant rule the deputation cannot be extended beyond that period. We are not satisfied that there was any mala fides in this case.

10. Apart from that, it is well settled that a deputationist has no right to continue on deputation vide Kunal Nanda Vs. Union of India & Another (JT 2000 (6) SC 574). In the said decision it was observed by the Supreme Court (vide paragraph 6)
The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments, and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.

11. Thus, it is well settled that unless his claim is based upon a statutory rule or regulation, a deputationist cannot insist on continuing on deputation, and he can always be repatriated at any time to his parent department at the instance of either the borrowing department or parent department. There is no vested right in such a person to continue on deputation or get absorbed in the borrowing department, unless there is a statutory rule to that effect.

12. In view of the above, there is no merits in the writ appeal. Accordingly, it is dismissed. No costs. Consequently, connected W.A.M.P. is also dismissed.

Index: Yes
Internet: Yes

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To

The Registrar of Co-operative Societies (Housing),
79, 4th Cross Street,
Gandhi Nagar, Adyar,
Chennai 20.